

## Brigham Young University Law School BYU Law Digital Commons

---

### Utah Supreme Court Briefs (pre-1965)

---

1960

# Salt Lake County et al v. Liquor Commission et al : Reply Brief

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Walter L. Budge; Gordon A. Madsen; Attorneys for Appellant;

---

### Recommended Citation

Reply Brief, *Salt Lake County v. Liquor Comm.*, No. 9207 (Utah Supreme Court, 1960).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/3602](https://digitalcommons.law.byu.edu/uofu_sc1/3602)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF UTAH**

SALT LAKE COUNTY, et al.,

*Respondents,*

vs.

U T A H LIQUOR CONTROL  
COMMISSION, et al.,

*Appellants,*

**FILED**

Case No.  
9207

---

REPLY BRIEF

---

WALTER L. BUDGE,  
Attorney General,  
GORDON A. MADSEN,  
Assistant Attorney General,  
*Attorneys for Appellant.*

---

## TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT .....	1
STATEMENT OF POINTS .....	2
ARGUMENT .....	2
POINT I. APPELLANT UTAH LIQUOR COMMISSION HAS COMPLIED WITH THE PROVISIONS OF TITLE 17-27-8, UTAH CODE ANNOTATTD 1953, AS AMENDED .....	2
CONCLUSION .....	5

### CASES CITED

Donald Drake and Everett E. Berg v. Salt Lake County,' et al., Third District Court No. 120529 (Salt Lake County) .....	4
---	---

### STATUTES CITED

Sec. 17-27-8, U. C. A. 1953, as amended .....	1, 2
Sec. 78-25-1(3), U. C. A. 1953 .....	4

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF UTAH**

---

SALT LAKE COUNTY, et al.,  
*Respondents,*

vs.

U T A H LIQUOR CONTROL  
COMMISSION, et al.,  
*Appellants.*

Case No.  
9207

---

REPLY BRIEF

---

PRELIMINARY STATEMENT

At Point III, page 11, Respondent in its brief refers to Title 17-27-8, U. C. A. 1953, as amended, relating to the procedure by which parties subject to the statute may apply for approval by the County Zoning Board for proposed structures. Respondent states flatly:

“\* \* \* Appellant has fully ignored this procedure. It has neither requested approval of its location of the planning commission nor has it, so far as this record shows, taken

a vote of its membership to overrule the Salt Lake County Planning Commission. It now asks this court to say that because it has wholly ignored the planning commission and these statutory provisions, we should now infer a compliance with the provisions of Title 17-27-8, U. C. A. 1953, as amended, from this conduct. But this lack of recognition is the very matter of which the county now complains. Had the same result obtained after compliance with the statute, the county would not and could not now complain. \* \* \*

## STATEMENT OF POINTS

### POINT I.

APPELLANT UTAH LIQUOR COMMISSION HAS COMPLIED WITH THE PROVISIONS OF TITLE 17-27-8, UTAH CODE ANNOTATED 1953, AS AMENDED.

## ARGUMENT

### POINT I.

APPELLANT UTAH LIQUOR COMMISSION HAS COMPLIED WITH THE PROVISIONS OF TITLE 17-27-8, UTAH CODE ANNOTATED 1953, AS AMENDED.

The statement above quoted is in reality an allegation of fact, to-wit, that the Liquor Commission, or

the other parties defendant in this action, failed to comply with the provisions of the above cited statute. Not only is there nothing in the record on appeal, nor is there anything in the statement of facts in appellant's brief adopted by respondent to justify this assertion, but, on the contrary, the reverse situation is the fact.

The attention of this Court is called to the pleadings in Civil Action No. 120529 in the Third District Court, in and for Salt Lake County, commenced April 16, 1959. The case is entitled *Donald Drake and Everett E. Berg v. Salt Lake County, et al.* Therein, at paragraph 1 of plaintiffs' amended complaint, appear the following allegations:

"1. Plaintiffs have heretofore, on April 8, 1959, applied to Defendant Salt Lake County for a building permit to construct a building at approximately 3219 E. 3300 South in Salt Lake County, said building to house a Utah State Liquor Commission retail store. *The aforesaid application for building permit was denied* on the grounds that the said location falls within a Commercial Zone C-2 classification and the present Salt Lake County Zoning Ordinance does not permit a liquor store in such zone but will permit same only in a Commercial Zone C-3.'" (Emphasis added.)

Paragraph 2 continues:

"2. Plaintiffs have heretofore petitioned the Salt Lake County Zoning Commission for

a re-classification of State Liquor Stores to permit their establishment in Commercial Zone C-2. The said Zoning Commission referred said petition to the Salt Lake County Commissioners, defendants herein, who denied same."

In its answer, Salt Lake County admits the allegations of paragraph 1 of the amended complaint and does not individually respond to the allegations of paragraph 2 of the amended complaint, but in paragraph 4 of the answer, defendants expressly deny each and every material allegation of plaintiffs' complaint not otherwise expressly admitted. All of the other paragraphs of plaintiffs' amended complaint, with the exception of paragraph 2, are specifically responded to. Appellant respectfully requests this Court pursuant to the provisions of Sec. 78-25-1 (3), U. C. A. 1953, to take judicial notice of said pleadings, a verified copy of which, for the Court's convenience, is on deposit with the Clerk of this Court.

Taking the above quoted paragraph 1 as a fact admitted by the County, its contention of non-compliance with the statute above cited cannot be said to be a correct statement of fact.

Appellant, therefore, has accordingly argued at pages 13 through 16 in its brief that since the statute itself provides that agencies in control of such proposed buildings (such as the appellant, Liquor Commission) may overrule such denial by the Board of County

Commissioners, and since in the statement of facts in appellants' brief adopted by respondent it appears that the liquor stores in question are constructed and in use, and the County in this action seeks to enjoin said use, this Court should construe the action of the Liquor Commission in building and using said stores an effectual overruling of the County Board of Commissioners' denial of permission to build such structures.

## CONCLUSION

In view of the arguments in appellant's brief and the foregoing additional argument, appellant again respectfully urges this Court to reverse the trial court's denial of appellant's motion to dismiss. Since, further, the action brought by respondent is injunctive in nature and runs to the use of the property, and since appellant is the actual user of same, the action should be dismissed as to all parties and not merely as to appellant, the other parties being only incidentally involved.

Respectfully submitted,

WALTER L. BUDGE,

Attorney General,

GORDON A. MADSEN,

Assistant Attorney General,

*Attorneys for Appellant.*